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**AUG 31 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**August 31, 1993**

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Stop Code 1170  
Washington, D.C. 20554

Re: MM Docket No. 93-191, RM-8088

Dear Ms. Searcy:

Enclosed herewith for filing on behalf of KKTU, Inc. are an original and fourteen copies of its Opposition of KKTU, Inc. to Joint Motion to Consolidate Proceedings in the above-captioned matter.

Please contact the undersigned if you have any questions concerning this matter.

Very truly yours,



Walter E. Diercks

WED:zso

Enclosure

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AUG 31 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.606(b)  
Table of Allotments,  
TV Broadcast Stations  
(Pueblo, Colorado)

MM Docket No. 93-191  
RM 8088

In re applications of

SANGRE DE CRISTO  
COMMUNICATIONS, INC.

For Extension of Time to Construct  
Television Translator K15BX

File No. BMPTT-921002JE

For Reinstatement of Construction  
Permit for Television Translator  
K15BX

File No. BMPTT-911105JE

For Extension of STA for  
Television Translator K15BX

In re Applications of

UNIVERSITY OF SOUTHERN COLORADO

For Extension of Construction Permit

File No. BPET-930216KE

For Assignment of Construction Permit

File No. BPET-900122KE

File No. BAPED-93

For New UHF Translators at  
Grand Junction, Colorado  
Cortez-Red Mesa, Colorado  
Durango, Colorado  
Ignacio, Colorado

File No. BPTT-930330CC

File No. BPTT-930330CB

File No. BPTT-930330CA

File No. BPTT-930330CD

To the Commission:  
STOP CODE 1800

**OPPOSITION OF KKTU, INC. TO  
JOINT MOTION TO CONSOLIDATE PROCEEDINGS**

KKTU, Inc. ("KKTU"), licensee of KKTU, Inc., Colorado Springs, Colorado, by its attorneys, opposes the Joint Motion of the University of Southern Colorado (the "University"), licensee of

KTSC(TV), Pueblo, Colorado, and Sangre de Cristo Communications, Inc. ("SCC"), licensee of KOAA-TV, Pueblo, Colorado, to consolidate the above-captioned proceedings, stating as follows:

1. On September 12, 1992, the University and SCC filed a Joint Petition for Issuance of Notice of Proposed Rulemaking to implement a previously announced channel swap between the University and SCC. The Chief, Allocations Branch, released a Notice of Proposed Rulemaking on the proposed channel swap on July 13, 1993 (MM Docket No. 93-191, DA 93-742). The Notice of Proposed Rulemaking ("NPRM") set September 3, 1993 as the Comment Date and September 20, 1993 as the Reply Comment Date.

2. The University and SCC waited until August 26, 1993 -- 44 days after the release of the NPRM and a mere eight days before the Comment Date -- to file their Joint Motion to Consolidate Proceedings (the "Joint Motion"). In the Joint Motion, the University and SCC, purportedly in the interest of efficiency and avoidance of delay, request that a number of proceedings be consolidated with the rulemaking proceeding announced by the NPRM. KKTU opposes the Joint Motion because consolidation will not be an efficient use of Commission resources, will cause delay, and will add issues to the rulemaking proceeding announced by the NPRM which do not need to be resolved in order to resolve the limited issues raised in the NPRM.

3. The principal argument made by the University and SCC in their Joint Motion is the entirely specious claim that KKTU and another licensee, Pikes Peak Broadcasting, licensee of KRDO-TV, Colorado Springs, are engaged in an unholy alliance to harass the

University and SCC and to prevent the proposed channel swap through abuse of Commission proceedings. The Joint Motion claims that some 44 pleadings have been filed in the various application and STA proceedings involving the University and/or SCC.<sup>1</sup> This claim of a conspiracy to victimize the University and SCC is without merit and is refuted by the substance of the pleadings filed by KKTv.

4. The simple fact is that each of the other proceedings which the University and SCC seek to consolidate with the rulemaking proceeding ultimately rests, and must be decided, on its own particular set of facts and issues which are not necessarily relevant to the limited issues raised by the NPRM. For example, as the NPRM notes, the University has applied for an extension of its construction permit (File No. BMPTT-930216KE) to move its antenna from a site near Pueblo to a site near Colorado Springs. NPRM at ¶ 7, n. 4. Despite this application, the NPRM concludes that, since the University has not operated facilities at the site near Colorado Springs set forth in the construction permit, it is appropriate to propose to modify SCC's authorization for KOAA-TV to specify the site near Pueblo from which the University currently broadcasts KTSC(TV), which unlike the site in the construction permit, is in conformity with the minimum distance separation requirements of the Commission's Rules. NPRM at ¶ 7. As a result of the actions taken in the NPRM, a consolidation of the University's application to extend its construction permit is only marginally

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<sup>1</sup> KKTv, Inc. notes that, of the 44 pleadings cited by the Joint Motion, a mere 8 were filed by KKTv, while 16 were filed by SCC and/or the University.

relevant to the rulemaking proceeding announced by the NPRM.

5. If the flawed logic of the Joint Motion were followed, an additional proceeding also would have to be consolidated with the NPRM: the Joint Petition of SCC and the University to deny the application of Central Wyoming College to construct and operate a new noncommercial television station at Laramie, Wyoming (File No. BPET-9201210KE). The premise of the Joint Petition to Deny the Central Wyoming College application is that the University's construction permit for facilities in Colorado Springs makes Central Wyoming College's proposed facilities short-spaced.

6. Central Wyoming College has opposed the Joint Petition to Deny by arguing that a) the University's construction permit is not viable because the University has abandoned its intent to build the facilities authorized by the construction permit, b) the University has not provided sufficient justification for extension of the construction permit and c) the only "real plan" for construction of the facilities authorized by the construction permit is for SCC to build the facilities after a channel swap with the University and that Commission approval of that swap is far from assured. A copy of the Central Wyoming College Opposition to Joint Petition to Deny (without the exhibits) is attached hereto for the convenience of the Commission as Attachment A.

7. Clearly, it would be absurd for the Commission to consolidate the proceedings involving Central Wyoming College's application for a construction permit for a noncommercial station in Laramie, Wyoming with the rulemaking proceeding announced by the

NPRM. The same logic compels the conclusion that the Commission should not consolidate the additional proceedings requested by SCC and the University.

8. The timing of the Joint Motion to Consolidate Proceedings also compels a denial of the Joint Motion. As noted above, the University and SCC waited until just eight days before the Comment Date to move for consolidation. No decision will be made on this Joint Motion to Consolidate Proceedings until at least after the Comment Date (September 3, 1993) and possibly until after the Reply Comment Date (September 20, 1993). Thus, if the Commission were to grant the Joint Motion, the Commission would either have to permit interested parties additional time in which to file comments and reply comments on additional issues raised in the consolidated proceedings or deny parties the right to comment on the newly consolidated proceedings.<sup>2</sup>

9. If the Commission were to decide to consolidate the proceedings and to grant additional time for comments and reply comments on the consolidated proceedings, the result would be exactly the kind of delay and inefficiency which the University and SCC claim they are seeking to avoid. Alternatively, if the Commission were to consolidate proceedings and to deny parties the opportunity to file comments on the newly consolidated proceedings, the Commission would be denying parties notice and an opportunity to be heard on issues consolidated with a rulemaking proceeding.

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<sup>2</sup> KKTV, Inc. has not filed any pleadings in File Nos. BMPTT-921002JE, BMPTT-911105JE, BPTT-930330CC, BPTT-930330CA, BPTT-930330CB, and BPTT-930330CD.

10. The Joint Motion to Consolidate Proceedings therefore invites the Commission to create a complex procedural and logistical nightmare which will virtually guarantee additional delay and inefficiency. The Commission therefore should deny the Joint Motion as both unnecessary and not in the public interest.

WHEREFORE, KKTU, Inc. respectfully moves the Commission to Deny the Joint Motion to Consolidate Proceedings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James L. Winston', is written over a horizontal line.

James L. Winston  
Walter E. Diercks  
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1730 M Street, N.W.  
Washington, D.C. 20036  
202/861-0870

Dated: August 31, 1993

**ATTACHMENT A**



BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In re Application of

CENTRAL WYOMING COLLEGE

For Construction Permit for a  
New Noncommercial Educational  
Television Station to Operate on  
Channel \*8 at Laramie, Wyoming

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)  
)  
)  
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File No. BPET-921210KE

Directed to: Chief, Mass Media Bureau

**OPPOSITION TO JOINT PETITION TO DENY**

Richard Hildreth  
Vincent J. Curtis, Jr.  
Anne Goodwin Crump

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March 31, 1993

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## SUMMARY

Central Wyoming College ("CWC") herein submits its Opposition to the Joint Petition to Deny its application for a construction permit for a new noncommercial educational television station at Laramie, Wyoming, filed by the University of Southern Colorado ("University") and Sangre de Cristo Communications, Inc. ("SCC") on March 16, 1993. University is the licensee of KTSC(TV), a non-commercial educational television station licensed to Pueblo, Colorado, and operating on Channel \*8. SCC is the licensee of KOAA-TV, a commercial station operating on commercial Channel 5 and also licensed to Pueblo, Colorado. Although CWC's proposed facilities would be fully spaced to KTSC(TV)'s currently licensed site, University and SCC have petitioned to deny CWC's application because CWC's site would be short-spaced to a site on Cheyenne Mountain authorized in a construction permit held by University. Commercially operated SCC opposes CWC's application on the basis that it has proposed a channel swap with University and hopes to acquire the currently noncommercial construction permit for its own use. The objections raised by University and SCC are entirely without merit.

CWC's proposed facilities actually are fully spaced to University's licensed facilities. While CWC's proposed facilities would be short-spaced to the facilities in University's Cheyenne Mountain construction permit, that permit is no longer viable. University has indicated that it has abandoned its plans to construct and it has not provided

sufficient reasons for an extension of the permit. Furthermore, it is doubtful that the Commission will approve a channel exchange that would allow SCC to build the proposed facilities. Accordingly, no waiver of the Commission's spacing rules is required. Even if the construction permit were viable, CWC has demonstrated that a waiver of the Commission's spacing rules is warranted. It will provide equivalent protection to the proposed KTSC facilities, and terrain shielding will eliminate the possibility of harmful interference. Further, fully spaced sites would be impractical, and significant public interest benefits would accompany use of the proposed site.

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In re Application of	)	
	)	
CENTRAL WYOMING COLLEGE	)	File No. BPET-921210KE
	)	
For Construction Permit for a	)	
New Noncommercial Educational	)	
Television Station to Operate on	)	
Channel *8 at Laramie, Wyoming	)	

Directed to: Chief, Mass Media Bureau

**OPPOSITION TO JOINT PETITION TO DENY**

Central Wyoming College ("CWC"), by its attorneys, hereby respectfully submits its Opposition to the Joint Petition to Deny its above-captioned application for a construction permit for a new noncommercial educational television station at Laramie, Wyoming, filed by the University of Southern Colorado ("University") and Sangre de Cristo Communications, Inc. ("SCC") on March 16, 1993. With respect thereto, the following is stated:

**I. BACKGROUND**

1. University is the licensee of KTSC(TV), a non-commercial educational television station licensed to Pueblo, Colorado, and operating on Channel \*8. SCC is the licensee of KOAA-TV, a commercial station operating on commercial Channel 5 and also licensed to Pueblo, Colorado. Although CWC's proposed facilities would be fully spaced to KTSC(TV)'s currently licensed site, University and SCC have petitioned to deny CWC's application because CWC's site would be short-spaced by 15.7 kilometers to a

site on Cheyenne Mountain authorized in a construction permit held by University, the initial term of which has now expired. University objects to a waiver of Commission's spacing rules to allow CWC to build its proposed new educational facility based on University's authorization for the Cheyenne Mountain site. Commercially operated SCC opposes CWC's application on the basis that it has proposed a channel swap with University and hopes to acquire the currently noncommercial construction permit for its own use. The objections raised by University and SCC are entirely without merit.

II. CWC PROPERLY REQUESTED A WAIVER OF SECTION 73.610

2. The Petitioners first claim that CWC's application should be dismissed because CWC did not request a waiver of Section 73.610 of the Commission's Rules. While the Petitioners are literally correct that CWC did not in so many words request a waiver of Section 73.610, this argument is an attempt to elevate form over substance, since CWC scrupulously followed the directions in the Commission application form. FCC Form 340, used by noncommercial educational applicants, at Question 13, asks whether the proposed facilities comply with Section 73.610. If the "No" block is checked, the application form requests an exhibit providing a justification.<sup>1</sup> In this instance, CWC checked the box marked "No" and referenced Exhibit VC-13 and the Engineering Report text. In the Engineering Report text, Section 2(b) is entitled "Short-

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<sup>1</sup> At no time does the OMB approved form request or require a separate waiver request.

Spacing to KTSC-TV" and provides the justification for this short-spacing. Thus, while CWC did not use the words "a waiver of Section 73.610 is requested," its engineering exhibit not only fully responded to the question on the application form, but also discussed and provided justification for the short-spacing, and made it clear that a waiver was requested. Moreover, the exhibit does explicitly request a waiver, although of Section 73.685(e) rather than Section 73.610. The context of the request makes it clear, however, that the request relates to spacing requirements and simply miscited the rule. See Engineering Statement, attached hereto as Exhibit 1. Thus, a dismissal of CWC's application on the grounds that it merely answered the question on the form and did not use particular magic words to request the waiver would be patently unreasonable and legally unsupportable.

III. NO WAIVER OF SECTION 73.610 IS REQUIRED BECAUSE THE KTSC CONSTRUCTION PERMIT INVOLVED IS NO LONGER VIABLE

A. CWC's Proposal is Fully Spaced to KTSC's Licensed Site and is Short-Spaced Only to a Non-Viable Construction Permit.

3. University does not dispute that CWC's proposed facilities are fully spaced to KTSC's licensed site. The site causing the short-spacing arose from a January 1990 application filed by University for construction permit to modify the facilities of KTSC, which proposed to move the KTSC transmitter site to Cheyenne Mountain (FCC File No. BPET-900122KE). In that application, University acknowledged that its facility would be 13.0 kilometers short-spaced to the Channel 7 allocation at Laramie and requested

a waiver of the spacing rule. In support of that request, University argued that it was important for KTSC to be able to serve Colorado Springs as well as Pueblo, its city of license, that fully-spaced sites were not suitable to obtain this coverage, that no TV translator channels were available, and that the mountainous terrain eliminated the possibility of objectionable interference to a future Laramie station. On February 28, 1991, the Commission granted University's application, and the initial term of the construction permit expired February 28, 1993. Two years later, without any construction undertaken, University filed an application for extension of construction permit (FCC Form 307), even though intervening events demonstrate that the authorization is no longer viable.

B. The University of Southern Colorado Has Abandoned Its Intent to Build the Facilities Authorized by the Construction Permit.

4. First and foremost, University has indicated that it does not intend to build the facilities authorized by its construction permit. On September 3, 1992, University and SCC issued a joint press release stating that they had reached an agreement to exchange channels, and that SCC would pay the University \$1 million "in exchange for the Channel 8 signal." See Exhibit 2. The press release further noted that although the Commission had approved a plan for KTSC to move to Cheyenne Mountain, University had been "unable to build the necessary transmission facilities there." Id. On September 8, 1992, University and SCC jointly filed a "Petition for Issuance of Notice of Proposed Rulemaking to Exchange



Channels." See Exhibit 3. This proposal to exchange channels clearly demonstrates that University does not intend to go forward with construction at Cheyenne Mountain.

5. Moreover, pleadings subsequent to the University/SCC Petition confirm the indication in the press release that University has been unable, apparently on financial grounds, to construct its proposed facilities. In December 1992, Pikes Peak Broadcasting Company ("Pikes Peak"), licensee of Stations KRDO-TV, Colorado Springs, Colorado, and KJCT-TV, Grand Junction, Colorado, and KKTU, Inc. ("KKTU"), licensee of Station KKTU(TV), Colorado Springs, Colorado, each separately filed a Petition for Issuance of Order to Show Cause, requesting that the Commission issue an order to show cause why University's Cheyenne Mountain construction permit should not be revoked.<sup>2</sup> In their Joint Consolidated Opposition to Petitions for Issuance of Order to Show Cause ("Joint Consolidated Opposition"), filed January 8, 1993, University and SCC specifically state that budgetary constraints had impeded University's ability to construct its proposed Cheyenne Mountain facilities. See Exhibit 4. This pleading also refers to KTSC as "a financially-strapped non-commercial station." Joint Consolidated Opposition at 20. University further stated that "[a]s a result, the University considered other means by which it could improve the quality and geographic reach of its service...."

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<sup>2</sup> Pikes Peak filed its Petition on December 2, 1992. KKTU filed its Petition on December 4, 1992.

Id. (emphasis added). Thus, University has itself indicated that, because of financial constraints, its decided to seek other options rather than to proceed with the Cheyenne Mountain construction.

6. In an obviously contradictory position, University has recently indicated that it had at one time the funds to construct the station, as it received an NTIA Public Telecommunications Facilities Program grant for this purpose in September 1991. This was brought out in a supplement to its application for extension of the construction permit, filed March 23, 1993, wherein University indicated that it received approval of a grant in the amount of \$386,007 in September 1991. See Exhibit 5. While this new revelation undercuts the previously offered rationale of its financial inability for failing to construct the station (and therefore should result in a denial of the pending application to extend the construction date), it does not change the fact that University has not built its proposed facilities and has affirmatively indicated that it does not intend to do so.<sup>3</sup> Indeed, if the University has had the funds to construct the station since September 1991, this fact merely underscores that the University's

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<sup>3</sup> This recent statement on the NTIA grant does call into question University's previous statements to the Commission concerning its financial difficulties and inability to construct because it was financially strapped. According to University's latest statement, it is not financial considerations that have impeded its ability to construct and have led it to consider other options. This is contrary to its earlier representations. If it was not financial reasons that prevented the University from building (and to date no other reasons have been forthcoming), what was the reason and why did the University misstate its problem?

failure to construct has been a matter of choice rather than inability. Clearly, the University has indicated that it has deliberately chosen not to construct its Cheyenne Mountain facilities and does not intend to itself construct them in the future. Therefore, the construction permit must be considered to be effectively abandoned by University.

7. University has recently claimed that it has not abandoned its construction permit, but rather "if the Commission does not approve the swap, the University intends to implement the Permit." "Joint Opposition to Petition to Revoke and Deny CP Extension," filed March 4, 1993, at 9. See Exhibit 6. This claim rings hollow, however, and it is doubtful whether University actually means that it plans to build in accordance with its construction permit. More importantly, why did University not build the station in the last two years?

8. University's first specific statement that it might "implement" the construction permit itself if the channel exchange is not approved came in its March 4, 1993 Joint Opposition. This Joint Opposition was filed in response to a "Petition to Revoke and Deny CP Extension," filed by Pikes Peak on February 19, 1993, which pointed out that University does not intend to proceed with construction. In previous pleadings, University indicated that if the channel exchange were not approved, it "would likely examine whether there are alternative means of improving service to Colorado Springs...." Exhibit 4, "Joint Consolidated Opposition to Petitions for Issuance of Order to Show Cause" at 6. This

statement was made on January 8, 1993, in response to the argument that University had abandoned its plan to improve KTSC's service to Colorado Springs by going forward with construction on Cheyenne Mountain, and, therefore, the construction permit should be revoked. The logical counter to this argument would have been for University at that time to assert its intent to build. It made no such statement, however, but instead stated that University would seek "alternative means" to improve its signal.<sup>4</sup> Further, in filing its application for extension of construction permit on FCC Form 307 (File No. BMPET-920216KE), University did not even suggest that there was even a remote possibility that it would go forward with construction if the channel exchange were not approved, much less make a commitment to do so. See Exhibit 7. Only after receiving petitions to deny its extension application did University apparently perceive the weakness of its extension application without such a statement and belatedly provide it. Needless to say, the statement is less than clarifying. Even in its Joint Opposition to Petition to Revoke and Deny CP Extension, University hedged somewhat. For example, in the footnote immediately following its statement that it would "implement" the construction permit, University discussed alternative options for

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<sup>4</sup> As noted above, University received the construction permit on February 28, 1991. The Commission requires permittees to immediately take steps to build. What University did during the last two years is a mystery. To date, the only explanation that they have provided is that they lacked the funds and are now "financially strapped."

implementing its goals, including assignment of its construction permit. See Exhibit 6. Only in its March 23 supplemental statement (over a month after its 307 was filed, approximately one month after the Pikes Peak and KKTU petitions were filed, and 19 days after its initial response) does University make anything approaching an unequivocal statement of its intent to build, and that statement is of limited, if any, value in view of the fact that it was made only under the threat of the loss of the construction permit.

9. All of the above factors make it clear that University has effectively abandoned its construction permit. University has indicated both through its actions and its inactions and also through its statements and its significant failure to make certain statements that it has no intention of building the facilities authorized by the construction permit.

C. University Has Not Provided Sufficient Justification for Extension of its Construction Permit.

10. It is uncontested that the initial term of the construction permit has now expired. Although University has filed an application for extension of construction permit, grant of that application is by no means assured. The Commission has indicated that it will grant an extension of a construction permit only in the circumstances enumerated in Section 73.3534 of the Commission's Rules:

- (1) Construction is complete and testing is underway looking toward a prompt filing of a license application;
- (2) Substantial progress has been made, i.e.,

demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or (3) No progress has been made for reasons clearly beyond the control of the permittee... but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction.

47 C.F.R. Section 73.3534(b). University's extension application meets none of these criteria. In filing its extension application, University did not, and could not, indicate that any progress whatsoever had been made toward construction. See Exhibit 7. In its supplement to the extension application filed March 23, 1993, University indicated that it had solicited bids from equipment suppliers and considered the bids in 1990, prior to the grant of the construction permit. See Exhibit 5. It does not state, however, that any further action was taken toward acquiring equipment after the construction permit was granted. Additionally, although University states that it conducted site lease negotiations until November 1991 (sixteen (16) months ago), it does not report any further action after that date. University states that the negotiations were put on hold pending the proposed channel exchange, but it does not explain what happened in the intervening ten months between the end of negotiations in November 1991 and the time the channel exchange was proposed in September 1992. Just how long was SCC involved in its negotiations with University?

11. Further, University offered no explanation for its failure to take any meaningful steps toward construction. Its latest now statements indicate that lack of funds was not the

reason for the delay. This is, of course, contrary to its earlier position. But if it is not because of a lack of funds that construction has not taken place, then why? While seeking to walk away from its previous claims of funding problems, University is entirely silent as to what has caused it to not even take the first steps towards building its proposed new facilities (e.g., ordering equipment).

12. The only justification for an extension of the construction permit offered by University is the pendency of the channel exchange proposal. Such a proposal standing alone is not, however, sufficient to support an extension of the construction permit and would make extremely poor precedent for further Commission actions dealing with extension requests. That the proposed channel exchange is, in effect, a proposed sale of the unbuilt construction permit to SCC in return for cash and certain equipment is quite clear. That it has long been well settled that the Commission will not extend a construction permit based solely on a proposed assignment of that permit is also quite clear. Community Service Telecasters, Inc., 6 FCC Rcd 6026 (1991); Construction of Broadcast Stations, 102 F.C.C.2d 1054 (1985); Community Telecasters of Cleveland, Inc., 58 F.C.C.2d 1296 (1976).

13. In addition to saying virtually nothing about any past efforts toward construction, University's extension application on Form 307 is entirely silent about any plans for future construction. Only in its belated March 23, 1993, Supplement does it make any statement as to whether it would go ahead with the

construction if the proposed channel exchange is not approved. Significantly, this Supplement was filed after the Pikes Peak "Petition to Revoke and Deny CP Extension," which pointed out that University does not intend to construct. Clearly the March 23, 1993 statement, contrary to University's previous statements and made only after it perceived a potential threat to the extension of its construction permit, is not reliable and would require a greater degree of specificity than that provided to date.

14. Moreover, University has provided no reason that would prevent it from going forward with construction during the pendency of the channel exchange procedure. The terms of the construction permit are known. This case is not analogous to one in which the permittee hopes to modify its facilities since here no changes in the permit are contemplated other than the identity of the permittee. Assuming, arguendo, that the construction permit were extended, whoever ends up with that permit would need to have the facilities built in accordance with the construction permit.<sup>5</sup> If the channel exchange were not approved and University retained the construction permit, the facilities would be built and could be operated by University. If the channel exchange were approved, SCC would acquire facilities that had already been built and could simply reimburse University for the construction expenses in

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<sup>5</sup> SCC may well, as suggested buy its "presence" here, move to modify the construction permit in order to eliminate the restrictions limiting the KTSC signal toward Denver.



addition to the funds already promised to University.<sup>6</sup> Further, if such an arrangement were preferred by the parties, SCC could grant the funds for construction, and those funds could be treated as a loan to University that would be repaid from its NTIA grant if the channel exchange were not approved. Accordingly, the mere pendency of the channel exchange proposal is not a sufficient excuse for University's past failure to build its proposed facilities and its failure to make any commitment to build those facilities in a timely manner in the future.

D. Commission Approval of the Proposed Channel Exchange Is Far From Assured.

15. To date, the only real plan advanced for construction of the facilities authorized by the construction permit is for SCC to build the facilities for its own station, KOAA-TV, pursuant to the proposed channel exchange with KTSC. Approval of the proposed channel exchange that would be necessary for this plan to be implemented is far from assured, however. University obtained its construction permit only through a waiver of the Commission's spacing rules, as its proposed facility is short-spaced to both KJCT(TV), Grand Junction, Colorado, and the Laramie allocation. University stated that the basis for its waiver request was its need to serve Colorado Springs, although Pueblo is its city of license.

16. The Commission's grant of this waiver was explicitly

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<sup>6</sup> One could speculate that if the channel swap were approved, SCC would seek a modification and, therefore, further delay.